

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN GRIFFIN HEADRICK,

Petitioner,

CHERYL STRANGE, et al.,

Respondents.

CASE NO. C19-5725 BHS

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”)

of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 44, and

Petitioner's objections to the R&R, Dkt. 45.

In August 2019, Petitioner John Headrick filed a petition for habeas corpus

pursuant to 28 U.S.C. § 2241. Dkt. 1. On March 6, 2020, following a guilty verdict, the

Grays Harbor County Superior Court adjudged Petitioner guilty of one count of first-degree assault.

degree child molestation and sentenced him to life without the possibility of early release.

See Dkt. 24, Ex. A. In July 2020, Petitioner consented to the conversion of his § 2241

petition to a § 2254 petition. Dkt. 30.

1 Subsequently, Petitioner filed an amended § 2254 petition in June 2021. Dkt. 40.
 2 On September 3, 2021, the Court ordered Petitioner to file a second amended petition
 3 because the first amended petition was deficient. Dkt. 43. The Court warned Petitioner
 4 that failure to comply would result in dismissal of his case. *Id.* Petitioner did not file an
 5 amended petition.

6 Judge Creatura then issued the instant R&R, recommending that the Court dismiss
 7 Petitioner's case for failure to prosecute and failure to comply with a Court order. Dkt. 44
 8 at 2. The R&R also recommends dismissal because Petitioner's direct appeal of his
 9 underlying state court judgment of conviction is still pending. *Id.* at 2–3. As such, the
 10 R&R concluded that Petitioner's judgment of conviction is not final under 28 U.S.C.
 11 § 2244(d) and that he has yet to exhaust his state court remedies. *Id.* at 3 (citing, *inter*
 12 *alia, Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983)).

13 Shannan Headrick, purportedly on behalf of Petitioner, then filed objections to the
 14 R&R. Dkt. 45. Ms. Headrick asserts that she e-filed an amended complaint as “next
 15 friend” of Petitioner due to Petitioner’s ongoing medical issues. *Id.* Ms. Headrick asks the
 16 Court to allow her to resubmit the amended petition. *Id.*

17 The district judge must determine de novo any part of the magistrate judge’s
 18 disposition that has been properly objected to. The district judge may accept, reject, or
 19 modify the recommended disposition; receive further evidence; or return the matter to the
 20 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

21 As a preliminary matter, Ms. Headrick is not permitted to appear on behalf of
 22 Petitioner. Representing another person in court is the practice of law. To practice law,

1 one must be an attorney. RCW 2.48.170. There is a pro se exception to this general rule,
2 under which a person “may appear and act in any court as his own attorney without threat
3 of sanction for unauthorized practice.” *Cottringer v. State, Dep’t of Emp. Sec.*, 162 Wn.
4 App. 782, 787 (2011). The pro se exception is, however, extremely limited and applies
5 “only if the layperson is acting solely *on his own behalf*” with respect to his own legal
6 rights and obligations. *Id.* at 787–88 (emphasis added). Thus, even if the Court had
7 received the amended petition Ms. Headrick states she filed, it would be improper for her
8 to file on behalf of Petitioner, and the Court would not consider the amended petition.

9 And even assuming the Court could consider an amended petition filed by Ms.
10 Headrick, the Court agrees with the R&R that this case should be dismissed without
11 prejudice for failure to exhaust. The publicly available state judicial records indicate that
12 Petitioner’s direct appeal of his underlying state court judgment of conviction is still
13 pending. “When, as in the present case, an appeal of a state criminal conviction is
14 pending, a would-be habeas corpus petitioner must await the outcome of his appeal
15 before his state remedies are exhausted” *Sherwood*, 716 F.2d at 634. Petitioner’s
16 case must therefore be dismissed for failure to exhaust.

17 The Court having considered the R&R, Petitioner’s objections, and the remaining
18 record, does hereby find and order as follows:

- 19 (1) The R&R is **ADOPTED**;
- 20 (2) This action is **DISMISSED without prejudice**;
- 21 (3) Certificate of Appealability is **DENIED**;

(4) Permission to proceed *in forma pauperis* is **REVOKED** for the purposes of any appeal; and

(5) The Clerk shall enter a JUDGMENT and close the case.

Dated this 14th day of December, 2021.


BENJAMIN H. SETTLE
United States District Judge